IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 6643 of 2004(N)

AGAINST THE ORDER DATED 11/02/04 IN OS.357/2000 IN IA.94/2003 of MUNI-MAGI.COURT,PONNANI

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PETITIONERS:

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1. SAIJUDHEEN S/O.HASSANKUTTY, AYIROOR AMSOM, PUTHIYIRUTHU DESOM, PONNANI TALUK.

2. AFSATH, S/O.HASSANKUTTY DO. DO.

3. SAIRABHEENA, D/O.HASSANKUTTY, DO. DO.

4. KUNHIMOL, W/O.HASSANKUTTY, AGED 57 YEARS, DO. DO.

BY ADV. SRI.K.P.MUJEEB

RESPONDENTS:

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1. KUNHIMOHAMMED, AYIROOR AMSOM, PUTHIYITATHU DESOM, PONNANI TALUK, S/O.PURAMBATHERI AHAMMED.

2. SIDHEEQUE, S/O. PURAMBATHERY AHAMMED, DO. DO.

3. NOWSHAD, S/O.PURAMBATHER AHAMMED, DO. DO

4. SHARAFUDHEEN, S/O.PURAMBATHERI AHAMMED, DO. DO.

5. SHAJI, S/O.PURAMBATHERI AHAMMED, DO. DO.

6. SUHARA, D/O.PURAMABATHERI AHAMMED, DO. DO.

7. SUBAIDA, D/O.PURAMBATHERI AHAMMED, DO. DO.

8. FATHIMA, D/O.PURAMBATHERI AHAMMED, DO. DO.

9. KUNHIMMU.U. W/O.PURAMBATHERI AHAMMED, DO. DO.

10. ABDUL LATHEEF, S/O.ANDATHODU HASANKUTTY, DO. DO.

11. JAMALUDHEEN, S/O.ANDATHODU HASANKUTTY, DO. DO.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.6643/04

APPENDIX

PETITIONERS' EXTS:

EXT.P1 – TRUE COPY OF ORDER DATED 11.2.04 IN IA.94/03 IN O.S.357/03 OF MUNSIFF-MAGISTRATE, PONNANI.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.6643 OF 2004

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DATED THIS THE 22ND JUNE, 2007

J U D G M E N T

Notice to respondents 6, 7 and 8 has been returned as unclaimed. It is declared that notice to those respondents is sufficient. The other respondents are yet to be served and one of them has even been reported dead. However, since those respondents had not challenged the impugned order which was one allowing the petitioners' application for restoration of suit imposing a condition, I am of the view that it is not necessary that this Court waits till they are also served. After all, it was a common contest which all these respondents were having before the court below.

2. This Court, while admitting this Writ Petition, imposed a condition that the sum of Rs.5000/- ordered by the court below to be deposited as costs for allowing the application shall be deposited within two weeks. The above order was passed on 25.2.2004. The learned counsel for the petitioners is not able to inform me whether the petitioners have complied with the above condition. However, having regard to the circumstance that the suit was one for recovery of possession on the strength of title and that the court below itself

thought that the application is liable to be allowed, I feel that if as a matter of fact the petitioners have complied with the condition imposed by this Court on 25.2.2004, they should be given relief.

3. Accordingly I set aside Ext.P1 and order that I.A.No.94 of 2003 filed by the petitioners will stand allowed subject to the following conditions:-

1. The trial court must on verification find that the petitioners have deposited the sum of Rs.5000/- within two weeks of 25.2.2004.

2. Over and above the said amount, the petitioners shall pay by way of costs a sum of Rs.1500/- to the contesting defendants before the court below either directly or through their counsel and remit another sum of Rs.1000/- with the High Court Legal Services Committee within one month from today.

Upon ensuring that both the above conditions are satisfied, the court below will restore the suit back to file and continue with the trial from the stage at which the suit came to be dismissed. If it is seen on verification that the amount of Rs.5000/- was not deposited on time or if the petitioners do not comply with the further condition imposed by

this Court, the Writ Petition will stand dismissed and the impugned order will stand confirmed.

The Writ Petition is disposed of as above.

(PIUS C.KURIAKOSE, JUDGE)

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